

ADVANCE COPY SUBJECT TO STATE BOARD OF EDUCATION APPROVAL

New Hampshire
State Board of Education
Minutes of the November 26, 2013 Emergency Meeting

ORDER ON THE TOWN OF TROY'S PETITION FOR DECLARATORY RULING

The emergency meeting of the State Board of Education was convened at 4:00 p.m. at the Department of Education, 101 Pleasant Street, Concord, NH. Relative to RSA 91-A:2. Tom Raffio presided as Chairman.

As this meeting was an emergency meeting Board members used teleconference, except for Chairman Raffio. Chairman Raffio was present. Also in attendance was Paul K. Leather, Deputy Commissioner of Education. Cindy C. Chagnon, Gary W. Groleau, and James C. Schubert called in. Virginia M. Barry, Commissioner of Education, was also involved in the teleconference. Patrick Queen, Esq. was present from the Attorney General's Office.

Silas Little, Esq., James O'Shaughnessy, Esq., John Teague, Esq., Tom Matson, Gideon Nadeau, were present.

Chairman Raffio did a roll call of members present by teleconference: James Schubert – Yes; Gary Groleau – Yes; Cindy Chagnon – Yes; Commissioner Barry – Yes.

Attorney Queenan said the Town of Troy has filed a "Petition for Declaratory Judgment" requesting that the State Board of Education declare the amendment adopted at the 2013 annual meeting to the Monadnock Regional School District allocation of expenses be declared null and void and of no effect.

Chairman Raffio read parts of the November 19 letter to Attorney Little stating that the Board is in receipt of your client's Petition challenging the March 12, 2013 Monadnock Regional School District's adoption of article Seven to amend the apportionment formula. The November 21st letter states that the State Board of Education formally requested a legal opinion of the Attorney General's Office pursuant to Ed 215.02.

Attorney Queenan summarized the Declaratory Ruling. Chairman Raffio asked Board members if they had any questions. Board members had none.

MOTION: Gary Groleau made the motion, seconded by James Schubert, that the State Board of Education issue the Declaratory Ruling.

VOTE: This was done by a roll call vote: James Schubert – Yes; Gary Groleau – Yes; Cindy Chagnon – Yes; Tom Raffio – Yes.

MOTION: Gary Groleau made the motion, seconded by Cindy Chagnon, that the members allow the Chairman to sign the Declaratory Ruling.

VOTE: This was done by a roll call vote: James Schubert – Yes; Gary Groleau – Yes; Cindy Chagnon – Yes.

In re The Monadnock Regional School District

DECLARATORY RULING

On November 1, 2013, the Town of Troy ("Troy") filed a "Petition for Declaratory Judgment" requesting that the State Board of Education (the "Board") "declare the amendment adopted at the 2013 annual meeting to the Monadnock Regional School District allocation of expenses be declared null and void and of no effect." Troy failed to cite any statute or administrative rule authorizing the Board to grant such relief. To the extent Troy seeks a declaratory ruling under Ed 215.02, for the reasons that follow, the Board finds that it lacks equitable authority to grant the requested relief.

STANDARD

Pursuant to Ed 215.02, Troy may petition the Board "requesting a declaratory ruling on the applicability of any statute concerning the [B]oard or rule adopted by the [B]oard." "If a legal opinion is required the [B]oard shall request the opinion of the attorney general's office and issue a responsive declaratory ruling within 20 working days or receipt of the attorney general's reply." Ed 215.02(b). On November 21, 2013, the Board requested a legal opinion from the Attorney General's Office as to its jurisdictional authority to grant the requested relief. On November 25, 2013, the Attorney General's Office provided the Board with its legal opinion.

ANALYSIS

Troy contends that the Monadnock Regional School District ("Monadnock") failed to follow the proper process for changing its apportionment

formula. Specifically, according to Troy, for a cooperative school district to impose an apportionment formula of 25% equalized valuation (EV) and 75% average daily membership (ADM), the following needs to occur: (1) the formula must be offered by the school board with the board's recommendation; (2) adopted by the cooperative school district; and (3) approved by the State Board. See RSA 195:7, I(c).

The petition alleges that the Monadnock Cooperative School Board did not "offer" or "recommend" the formula before it was ultimately adopted by the school district and subsequently approved by the Board. Instead, the article to change the formula was placed on the warrant, for the district's vote, by way of petition. See RSA 197:6. Accordingly, although not explicitly discussed in its petition, Troy is essentially seeking ruling on whether such an apportionment formula may be adopted by way of petition, without school board "offer" and "recommendation."

Ultimately, however, Troy seeks nullification of Monadnock's adoption of the apportionment formula. The Board lacks equitable authority to grant such relief. Instead, under these circumstances, the Board's jurisdiction is limited to ruling on the "applicability" of relevant statute or rule. See Ed 215.02. Unless explicitly provided by statute, similar to the district courts, executive branch agencies and boards lack equitable authority. See *Matte v. Shippee Auto, Inc.* 152 N.H. 216, 223 (2005) (noting the district court has limited power and that equitable powers must be conferred by statute). Further, Troy has failed to cite to any statutory authority granting the Board the equitable power to nullify the

vote of a school district. As such, the Board does not have the equitable authority to nullify the vote of a cooperative school district.

The Board, however, may review the process prospectively. Under RSA chapter 195, the Board may “approve articles of agreement for a proposed cooperative school district . . . only after determining that the formation . . . *will be* in accord with such standards and the purposes set forth herein.” RSA 195:2 (emphasis added). Absent explicit equitable power, the Board lacks the authority to retroactively unwind the process.

Moreover, to the extent Troy’s petition may be construed as a motion to reconsider the Board’s July 18, 2013, decision certifying the vote and approving the apportionment formula, the motion is significantly untimely and therefore DENIED. Under Ed 213.02, a party must seek reconsideration within 30 days of a Board “decision.” Troy, however, failed to object to the Board’s approval at or prior to the July 18, 2013 meeting as well as failed to file a motion seeking reconsideration of the Board’s decision. Instead, over 100 days later, Troy filed this petition for “declaratory judgment.” Even if the Board was to construe this as a motion for reconsideration, as tax rates have already been set for most of the effected towns, it would not be appropriate for the Board to waive the time deadline within Ed 213.02 to reconsider its decision.

CONCLUSION

Accordingly, regardless as to whether RSA 195:7 requires a cooperative school board to “offer” and “recommend” a formula before district adoption and

Board certification and approval, the Board lacks jurisdiction to grant the requested relief.

Tom Raffio, Chairman

State Board of Education

November 26, 2013

Chairman Raffio asked if anyone would like to present testimony. Attorney Little said that the petition was a legal ruling on the matter of law and felt that the Attorney General's Office had not used the right rule. Mr. Matson also spoke of his concerns.

MOTION: Cindy Chagnon made the motion, seconded by James Schubert, that the emergency Board meeting be adjourned at 4:15 p.m.

VOTE: This was done by a roll call vote: James Schubert – Yes; Gary Groleau – Yes; Cindy Chagnon – Yes; Tom Raffio – Yes.

Secretary